

(2007) 04 MAD CK 0018
In the Madras High Court
Case No : Second Appeal No. 1757 of 1996

Selvaraj

APPELLANT

Vs

Krishnasamy Reddiar, Chinnasamy, Balasundaram and Tamil
Selvan

RESPONDENT

Date of Decision : 01-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 506

Citation : (2007) 04 MAD CK 0018

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : N. Krishnaveni, for T.R. Rajaraman, for the Appellant; M. Ashok Kumar, for R. Arunagirinatham, for the Respondent

Judgement

A. Selvam, J.—The first defendant as appellant has challenged the legalof the judgment and decree dated 9/10/1996 passed by the Third

Additional District Court, Tiruchirapalli, wherein the judgment and decree passed in Original Suit No. 1074 of 1993 by the Second Additional

Sub-Court, Tiruchirapalli are set aside.

2. The respondents 1 to 3 herein as plaintiffs have instituted the Original Suit No. 1074 of 1993 on the file of the Second Additional Sub-Court,

Tiruchirapalli, praying to pass a money decree in their favour to the tune of Rs. 31,000/- on the basis of malicious transaction.

3. The material averments made in the plaint may be stated like thus:

The first plaintiff is a Mirazdhar owning seven acres of nanja lands and a terraced house at Siruganur. The plaintiffs 2 and 3 are the sons of the first

plaintiff. The second plaintiff is working as a driver in DCTC at Perambalur and drawing a monthly salary of Rs. 2,500/-. The third plaintiff is

working as a conductor in a private bus at Perambalur and drawing a monthly salary of Rs. 1,000/-. The plaintiffs belong to a respectable family of

Reddiar Community and they are having their own status in Siruganur. In Village Panchayat, the first plaintiff has been occupying an important

position. The first defendant is a teacher working in Tirupatore. The second defendant is the son of one Rangarajan of Siruganur and he is a close

associate and friend of the first defendant. The father of the second defendant has filed the Original Suit No. 506 of 1990 on the file of the Sub-

Court, against the first plaintiff. The defendants 1 and 2 have joined together and hatched conspiracy to injure the reputation of the plaintiffs and

with criminal intention, launched a criminal prosecution against the plaintiffs with malice. The first defendant has given a false complaint against the

plaintiffs to the Sub-Inspector of Police, Siruganur. In the said complaint, it has been stated that the alleged occurrence has taken place on

25/6/1990 and during the course of occurrence, the accused/plaintiffs have hurled invectives against the plaintiff/first defendant by using filthy

words and they have also threatened to kill the first defendant/complainant by using deadly weapons and the persons namely Tamilselvan,

Anbazzhagan, Krishnamurthy and Venkatachalam have seen the occurrence.

4. In pursuance of the complaint given by the first defendant, the third plaintiff has been arrested by Siruganur Police and the plaintiffs 1 and 2 have

surrendered to the Police. The complaint given by the first defendant has been registered and subsequently, a final report has been filed and the

same has been taken on file in C.C. No. 1739 of 1990 on the file of the Judicial Magistrate Court, Lalgudi. The plaintiffs have attended fifty four

hearings in the Judicial Magistrate Court, Lalgudi. After trial, the Judicial Magistrate, Lalgudi has acquitted all the accused/plaintiffs by way of

giving a finding that the complaint in question has been fabricated. There is no reason and proper cause for causing such prosecution by the first

defendant against the plaintiffs/accused. With a view to damage the reputation and status of the plaintiffs in the eye of law and public, the

defendants with malice have acted against the plaintiffs/accused. The plaintiffs have sustained monetary loss also. On 4/7/1993, the plaintiffs have

given a notice to the defendants and they have also issued a false reply notice. Now, the defendants are liable to pay the amount claimed in the suit.

Under the said circumstances, the plaintiffs have filed the present suit for the relief indicated supra.

5. The material averments made in the written statement filed by the first defendant and adopted by the second defendant can be stated like thus:

It is false to say that the first plaintiff is owning seven acres of lands and also a terraced house. The second plaintiff is working as a driver. But the third plaintiff is not working as a conductor. There is no collusion or conspiracy amongst the defendants 1 and 2 so as to launch a prosecution against the plaintiffs with false allegations. The occurrence has taken place on 23/6/1990. The Judicial Magistrate has also found that there is some corrections in dates. There is no malice on the part of the defendants. The defendants have given a suitable reply to the notice issued by the plaintiffs.

There is no merit in the suit and the same deserves dismissal.

6. On the basis of the divergent pleadings raised by either party, the trial Court has framed necessary issues and after poring both the oral and documentary evidence has dismissed the suit with costs. The judgment and decree passed by the trial Court have been challenged in Appeal Suit

No. 107 of 1996 on the file of the Third Additional Sub-Court, Tiruchirapalli. The First Appellate Court after reappraising the evidence available

on record has allowed the appeal, whereby and whereunder, set aside the judgment and decree passed by the trial Court and ultimately, decreed

the suit as prayed for with subsequent interest. The judgment and decree passed by the First Appellate Court are now being challenged in the present appeal at the instance of the first defendant/appellant.

7. At the time of admission of the present Second Appeal, the following substantial questions of law have been formulated for consideration.

1. Whether the lower Appellate Court was correct in reversing the judgment and decree of the trial Court and granted a decree for damages in

favour of the plaintiffs while the plaintiffs failed to establish malice on the part of the defendants in filing a public interest litigation?

2. Whether the lower Appellate Court was correct in granting a decree for interest while it was not asked for in the plaint and when Court fee was not paid thereon?

8. Before perpending the rival arguments advanced on either side, it would be

more useful to perorate something about the criminal proceedings taken against the plaintiffs. It is an admitted fact that the first defendant herein as complainant has lodged a complaint in Siruganur Police Station, wherein the present plaintiffs have been shown as the accused. The original complaint has been marked as Ex.B.3, wherein it has been specifically stated that on 25/6/1990, the accused have dumped waste materials in a place which belongs to Mutt. The complainant/first defendant along with Village people has questioned the act of accused/plaintiffs. But the accused/plaintiffs have hurled invectives against the complainant by using filthy words and further, the accused/plaintiffs have threatened the complainant/first defendant by showing deadly weapons. It is an admitted fact that the complaint given by the complainant/first defendant has been registered in Crime No. 208 of 1990 under Sections 294(b) and 506(ii) of The Indian Penal Code. On the basis of the complaint, the investigating agency has done its investigation and ultimately, filed a final report against the accused/plaintiffs on the file of the Judicial Magistrate Court, Lalgudi. The judgment passed by the Judicial Magistrate Court, Lalgudi in C.C. No. 1739 of 1990 has been marked as Ex.A.16. In Ex.A.16, it has been clearly mentioned that the complaint in question is nothing but a concoction and the Judicial Magistrate, Lalgudi has ultimately acquitted the accused/plaintiffs from the charges framed under Sections 294(b) and 506(ii) of The Indian Penal Code. After getting acquittal judgment in C.C. No. 1739 of 1990, the plaintiffs have come forward with the present suit so as to get a compensation of Rs. 31,000/- on the basis of malicious prosecution against the defendants.

9. It is averred in the plaint that the first plaintiff is owning seven acres of lands and a terraced house and also occupies an important position in Village Panchayat and the father of the second defendant has instituted a civil suit against the first plaintiff and with the intention of tarnishing the reputation of the plaintiffs, the defendants 1 and 2 have colluded together and lodged the complaint in question.

10. It has been contended on the side of the defendants that actually the occurrence has taken place on 23/6/1990 and the first defendant has given the complaint in question only in respect of the occurrence which has been actually taken place. But in the complaint, the date of occurrence

has been corrected as 25/6/1990 and the same has not been done by the first defendant and the learned Judicial Magistrate, Lalgudi has

erroneously acquitted all the accused and since the first defendant has given the complaint in question on the basis of real occurrence and since

there is no malice on the part of the defendants, the defendants are not liable to pay the amount claimed in the suit.

11. As adverted to earlier, the trial Court has dismissed the suit with costs. But however, the First Appellate Court has reversed the judgment and

decree passed by the trial Court and ultimately decreed the suit as prayed for with subsequent interest.

12. The learned Counsel appearing for the appellant has strenuously and also repeatedly contended that the occurrence has actually taken place on

23/6/1990 and in the place of occurrence, all the accused have hurled invectives against the first accused by using filthy language and they have

also threatened the first defendant to kill him by using deadly weapons. On the basis of the allegations made against the plaintiffs/accused in the

complaint, the same has been registered under Sections 294(b) and 506(ii) of The Indian Penal Code. But without the knowledge of the first

defendant, the actual date of occurrence viz., 23/6/1990 has been altered as if the occurrence has taken place on 25/6/1990 and there is no malice

either on the part of the first defendant or on the part of the second defendant to lodge a false complaint against the plaintiffs/accused.

13. The trial Court, after analysing all the vital contentions raised on either side has clearly dismissed the suit. But the First Appellate Court without

appreciating the evidence available on record has erroneously decreed the suit and since there is no malice on the part of the defendants 1 and 2

and since they have acted with probable and reasonable cause, they are not liable to pay the suit amount and therefore, the judgment and decree

passed by the First Appellate Court are liable to be set aside.

14. In support of the argument advanced on the side of the appellant/first defendant, the following decisions have been accited.

15. The first and foremost decision is reported in AIR 1940 Madras 683 (Abubucker Ebrahim and Anr. v. Maganlal K. Javeri), wherein the

Division Bench of this Court has held as follows:

Malice may be implied when there is absence of reasonable and probable cause,

but it does not necessarily follow from the fact that proceedings have been launched without reasonable and probable cause that the person launching them did in fact act maliciously.

16. The second decision is reported in 1998 (2) L W 601 (S. Rangaraju v. S. Devarajan), wherein this Court has held that

The findings of the Courts below that the criminal prosecution was without any reasonable and probable cause and that the same was malicious,

cannot be sustained on the facts and circumstances of the case and the conclusions arrived at to the contra are vitiated by patent error of law and

perversity of approach in the matter of appreciation of the materials and also in the matter of application of the relevant principles of law.

17. The third decision is reported in Ekambaram Vs. E. Subramanian, , wherein it has been held that

No explanation whatsoever is given on the side of the appellant as to why the respondent should file a criminal case against the appellant with

marriage.

18. The last decision is reported in 2002 2 L W 384 (Venkittu Achari v. G. Vaithivanathan), wherein it has been held that

When the complaint was given only of trouble and reasonable cause, it cannot be said that the defendant was acted with malice when he lodged

the complaint.

19. With these legal backdrops, the Court has to analyse the present case. The specific contention of the plaintiffs is that with an oblique motive

and also with malice, the first defendant has lodged the complaint in question against them. But the specific contention urged on the side of the

defendants is that actually, the occurrence has taken place on 23/6/1990 and in the place of occurrence, all the plaintiffs have hurled invectives

against the first defendant by using filthy language and they have also threatened him by showing deadly weapons that they would kill him.

20. As adverted to earlier, the complaint given by the first defendant has been registered under Sections 294(b) and 506(ii) of the Indian Penal

Code. The Judicial Magistrate, Lalgudi has come to the conclusion that no such occurrence has taken place on 25/6/1990 and further, the Judicial

Magistrate, Lalgudi has come to the conclusion that the complaint in question is nothing but concoction.

21. The specific case of the defendants is that the occurrence has taken place on 23/6/1990 and to that effect, the first defendant has given the complaint in question. But subsequently, some corrections have been made in the complaint. Ex.B.3 is the original complaint given by the first defendant against all the plaintiffs, wherein some corrections have been made with regard to dates. But the First Information Report has disclosed that the occurrence has taken place on 25/6/1990.

22. At this juncture, it would be more useful to look into the evidence given by the first defendant. The trial Court has extracted the deposition given by the first defendant, wherein the first defendant has stated that the occurrence has taken place on 23/6/1990 and on that day itself, he has lodged the complaint in question. On 25/6/1990, he has gone to School for doing his work and due to efflux of time, he has given evidence as if the occurrence has taken place on 25/6/1990. If really, the first defendant has given the complaint in question on 23/6/1990, definitely, he could have produced the receipt given by the Police Department. But he has not done it. Therefore, it goes without saying that the complaint in question has been lodged only on 25/6/1990. The corrections made on the dates would not help the first defendant since he has failed to prove positively that he has given the complaint in question on 23/6/1990.

23. Even assuming without conceding that the occurrence has taken place on 23/6/1990 as alleged on the side of the defendants, the Court has to analyse whether without malice and with probable and reasonable cause, the complaint in question has been lodged by the first defendant. The specific contention of the defendants is that in the place of occurrence, the plaintiffs have hurled invectives against the first defendant by using filthy language and also threatened him by showing deadly weapons that they would kill him. The Judicial Magistrate Court, Lalgudi has given total acquittal to all the accused from the charges framed against them.

24. In the plaint, at paragraph 12, it has been specifically averred that the defendants have acted to cause damage to the reputation of the plaintiffs with malice. Further, in paragraph 5, it has been clearly stated that the father of the second defendant has instituted the Original Suit No. 506 of 1990 on the file of the Sub-Court, Tiruchirapalli against the first plaintiff and further, it is also stated in the plaint that the second defendant is a close

associate of the first defendant.

25. At this juncture, the Court must narrate the circumstances under which the plaintiff in a suit for malicious prosecution can succeed.

- a. The plaintiff has been prosecuted by the defendant.
- b. The prosecution has ended in favour of the plaintiff.
- c. The defendant has acted without reasonable and probable cause.
- d. The defendant has been actuated by malice.

26. As adverted to earlier, the specific contention of the plaintiffs is that the defendants have acted with malice and due to that the first defendant

has given the complaint in question on frivolous grounds. Now, the Court has to find out as to against whom the initial burden lies and also upon

whom the burden shifts.

27. In 84 L W 813 (C. Dakshinamurthy v. K. Venkataswamy Chettiar and Anr.), this Court has held as follows:

It is true that in an action for malicious prosecution, the plaintiff has to establish the absence of reasonable and probable cause and malice. It is also

true that the burden shifts after the plaintiff has let in prima facie evidence in support of his case. But the question of onus assumes quite a different

character when the plea of the defendant is a mere denial of the allegation of the plaintiff that the complaint was made without reasonable and

probable cause but further, that the offences with which the plaintiff was charged are true to the knowledge of the defendant. In such a case, it is

incumbent on the Court to look at the entire evidence adduced in the case on either side and decide whether or not the defendant's version,

namely, that he actually and directly was aware of the commission of the offence.

Further, it is held that

Once the complaint is found to be false, it should be held to be false to the knowledge of the defendant.

28. From the close reading of the decisions mentioned supra, the following legal aspects have become emerged.

- a. The plaintiff has to establish the absence of reasonable and probable cause and also malice and therefore, the initial burden lies upon the plaintiff.
- b. If the plaintiff has discharged his initial burden, then the burden shifts upon the defendant to prove that he has not been actuated with malice and

he has acted with reasonable and probable cause.

29. Now, the Court has to analyse whether the legal aspects mentioned supra have been fulfilled in the present case.

30. Even at the risk of jarring repetition, the Court would like to point out that in the plaint, necessary averments are found to the effect that the

defendants have acted with malice and they have also acted without reasonable and probable cause.

31. The second plaintiff has been examined as P.W.1. He has categorically stated in his evidence that on 23/6/1990, no such occurrence has taken

place and they have purchased the land which lies nearer to their house from a third person and the defendants have also decided to purchase the

same and due to that problem has arisen betwixt them and the defendants and further, he has stated that the defendants have arrested his brother

illegally by using Police force. Therefore, the plaintiffs have clearly established the fact that the defendants have acted with malice and they have

also acted without reasonable and probable cause.

32. It is not an exaggeration to say that the plaintiffs have discharged the initial burden lies upon them. Now, the burden shifts upon the defendants

to prove that they have acted with reasonable and probable cause and also without malice. The defendants 1 and 2 have been examined as

D.Ws.1 and 2 and both of them have simply stated that on 23/6/1990, the occurrence has taken place. But nowhere in their evidence, it is stated

that the occurrence has taken place on 23/6/1990 and in the place of occurrence, all the plaintiffs have hurled invectives against the first defendant

by using filthy language and all the plaintiffs have threatened him by showing deadly weapons that they would kill him. In short, the defendants have

failed to adduce evidence to prove their reasonable and probable cause and also to prove that they have acted without malice. In fact, the

defendants ought to have examined all the witnesses who have been examined in the criminal Court. But in the instant case, as animadverted to

earlier, the defendants have failed to adduce evidence with regard to occurrence and they have also failed to examine other eye witnesses so as to

prove the occurrence alleged to have taken place on 23/6/1990. Therefore, the plaintiffs have clearly established the malice of the defendants. But

the defendants have failed to establish that the first defendant has acted with

reasonable and probable cause and also without malice. Since the first defendant has failed to establish that he has acted with reasonable and probable cause and also without malice, the Court can easily come to a conclusion that the complaint in question has been given with malice and also without reasonable and probable cause. Since the complaint in question has been given without reasonable and probable cause, it is needless to say that the first defendant is liable to pay compensation to the plaintiff as claimed in the plaint.

33. The trial Court without considering the fact that the first defendant has failed to discharge his burden and without considering the correct legal position has erroneously dismissed the suit. But however, the First Appellate Court has rightly found that the first defendant has not discharged his burden and he has also acted with malice and without reasonable and probable cause and ultimately found that the first defendant is liable to pay compensation to the plaintiffs as claimed in the plaint. In view of the foregoing narration of both the factual and legal premise, this Court has not found even a flimsy ground to make interference with the well merited judgment passed by the First Appellate Court.

34. The learned Counsel appearing for the appellant/first defendant has also accentuated the Court to look into the last portion of evidence given by P.W.1. Of course, it is true that P.W.1 has clearly admitted that except property dispute, no wrangling has occurred betwixt them and defendants. In fact, P.W.1 has spoken the truth. It is not the case of the plaintiffs that except the property dispute they are also having some other problems with the defendants. The last portion of the evidence of P.W.1 has not in any way debilitated the entire case of the plaintiffs since the plaintiffs have clearly proved that the first defendant has acted with malice and also without reasonable and probable cause. In view of the foregoing enunciation, it is needless to say that the entire argument advanced by the learned Counsel appearing for the appellant/first defendant is sans merit.

35. The learned Counsel appearing for the respondent has sparingly argued that in the instant case, the plaintiffs have discharged their burden. But the first defendant has failed to discharge his burden and the First Appellate Court has rightly come to the conclusion that the first defendant is

liable to pay the amount claimed in the suit and therefore, there is no inkling to make interference with the well merited judgment passed by the

First Appellate Court. It has already been analysed and ultimately found that the first defendant has not discharged his burden and the First

Appellate Court has also rightly fixed the liability of the first defendant. Under the said circumstances, the argument advanced by the learned

Counsel appearing for the respondents is really having attractive force.

36. The first substantial question of law formulated in the present Second Appeal as to whether the First Appellate Court has erred in reversing the

judgment and decree passed by the trial Court. It has already been discussed in detail that the conclusion arrived at by the First Appellate Court is

not perverse and the same needs no interference.

37. The second substantial question of law framed in the present Second Appeal is whether the First Appellate Court is right in awarding interest

even though the same has not been claimed by the plaintiffs. Of course, it is true that the plaintiffs have not claimed anything with regard to interest.

But the First Appellate Court has passed a decree against the first defendant to the tune of Rs. 31,000/- with subsequent interest. Since the

plaintiffs themselves have not claimed any interest, it is totally unwarranted on the part of the First Appellate Court to award subsequent interest

and to that effect, the judgment and decree passed by the First Appellate Court are liable to be interfered with.

38. In fine, this appeal is allowed in part and the judgment and decree passed by the First Appellate Court are modified as follows:

The subsequent interest awarded by the First Appellate Court is set aside and in other respects, the judgment and decree passed by the First

Appellate Court are confirmed.